

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457 (EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.  
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;  
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT  
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.  
MITCHELL; and POLICE OFFICER STEPHEN J.  
MINUCCI,

Defendants.

- - - - -  
VIDEOCONFERENCE VIA ZOOM  
Conducted by:  
LEX REPORTING SERVICE, INC.  
160 Broadway  
New York, New York

October 14, 2020  
2:02 p.m.

**DEPOSITION of CAPTAIN WILLIAM A. DIAB,**

named herein as **SERGEANT WILLIAM A. DAIB**, a  
Defendant in the above-entitled action, held  
remotely via Zoom videoconference, pursuant to  
Order, taken before Tania C. Pedrosa, a  
shorthand reporter and Notary Public within and  
for the State of New York.

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THE ABOUSHI LAW FIRM, PLLC  
Attorneys for Plaintiff  
1441 Broadway, Fifth Floor  
New York, New York 10018

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BY: AYMEN A. ABOUSHI, ESQ.

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JAMES E. JOHNSON, ESQ.  
Corporation Counsel  
Attorney for Defendants  
100 Church Street  
New York, New York 10007

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BY: JOSHUA A. WEINER, ESQ.  
FILE No.: 2017-066702

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## S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED  
by and between the attorneys for the  
respective parties herein, that filing,  
sealing and certification be and the  
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the  
form of the question shall be reserved  
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be signed  
and sworn to before any officer  
authorized to administer an oath, with  
the same force and effect as if signed  
and sworn to before the Court.

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THE REPORTER: This

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deposition is being conducted via  
Zoom videoconferencing. All  
parties present are appearing  
remotely and are confirming that  
they can hear and see through the  
video without any technical  
issues.

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Would counsel and the

11

witness please confirm.

12

MR. ABOUSHI: Confirmed.

13

MR. WEINER: Confirmed.

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THE WITNESS: Yes.

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THE REPORTER: Before I

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swear in the witness, I will ask  
counsel to stipulate on the  
record that due to the national  
emergency pandemic, the court  
reporter may swear in the  
deponent even though they are not  
in the physical presence of the  
deponent, and that there is no  
objection to that at this time,  
nor will there be an objection to

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1 5  
2 it at a future date.

3 MR. WEINER: Yes, confirmed.

4 MR. ABOUSHI: Confirmed.

5 THE REPORTER: And, Counsel,  
6 can you represent that to the  
7 best of your knowledge and  
8 belief, the witness appearing  
9 today via videoconference is  
10 indeed, according to the caption,  
11 Sergeant William A. Diab?

12 THE WITNESS: Yes.

13 MR. WEINER: Confirmed, yes.

14 W I L L I A M A. D I A B, the witness herein  
15 via videoconference, having first been  
16 duly sworn by a Notary Public of the  
17 State of New York, was examined and  
18 testified as follows:

19 EXAMINATION BY

20 MR. ABOUSHI:

21 Q State your name for the record,  
22 please.

23 A Captain William A. Diab.

24 Q State your address for the  
25 record, please.

1 W. A. Diab

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2 patrol guide. Like I said, I think I was  
3 studying for the test.

4 Q Okay. And do you remember what  
5 your tour of duty was that day?

6 A I think it was 1715 to 0200.

7 Q So 7 o'clock to 2 o'clock?

8 A No. It was 1715 which is 5:00,  
9 5 o'clock.

10 Q 5:00 p.m.?

11 A Yeah.

12 Q My military time is off.

13 A Yeah.

14 Q Okay. So you were on duty from  
15 5:00 to 2:00 p.m. supervising both the  
16 conditions team and --

17 A From 5:00 p.m. to 2:00 a.m.

18 Q 5:00 p.m. to 2:00 a.m. --

19 A Yeah.

20 Q -- on the day and night of the  
21 incident --

22 A Yes.

23 Q -- supervising the conditions  
24 team and anti-crime, correct?

25 A Yes.

1 W. A. Diab

75

2 Q You yourself didn't discharge  
3 your weapon that night, correct?

4 A No, correct.

5 Q You did unholster it at some  
6 point, correct?

7 A Say that again.

8 Q You did unholster your weapon at  
9 some point that night, correct?

10 A Yes.

11 Q When you discharge your weapon,  
12 is it accurate that the shell casing  
13 discharges up and to the right?

14 MR. WEINER: Objection.

15 A Is it accurate --

16 Q You can answer.

17 A -- that it goes to the right? I  
18 mean, it could go to the left, it could go  
19 straight up, it could go straight down. I  
20 mean, I guess in --

21 Q In your experience -- I'm sorry.  
22 Go ahead.

23 A I guess in perfect science it's  
24 supposed to, you know, eject out to the right  
25 but it could go anywhere.

1 W. A. Diab 80

2 Q Everything turned out okay with  
3 the ringing?

4 A Yes.

5 Q Okay. Now, you testified that  
6 you were at your desk or in your office and  
7 at some point you decided to leave the  
8 precinct that day, correct?

9 A Yes.

10 Q Okay. Do you have your own  
11 office at the precinct or do you share an  
12 office or something else?

13 A No, we don't share an office.

14 Q Okay. So you were in there  
15 studying for your exam. And what happens  
16 next that causes you to leave the precinct?

17 A Officer Mitchell gets a call from  
18 Police Officer Cespedes basically saying that  
19 he -- the bouncer from a club -- some guy  
20 working security at this club at 189 Bridge,  
21 he says to him that the guy -- I guess he  
22 frisked him and the guy has a gun and he's,  
23 like, drunk. So he tells Cespedes -- about  
24 to tell Cespedes that the guy's got a gun  
25 right now. So he relays this info to

1 W. A. Diab 81

2 Mitchell and then -- Mitchell was actually in  
3 the office while I was there. So he  
4 basically relays me -- to me what Cespedes is  
5 saying and then I talked to Cespedes real  
6 quick and he -- he verifies -- confirms that  
7 the guy has a gun right there and he's drunk  
8 and he's acting crazy.

11                   A         Yeah. He was actually an  
12 auxiliary officer in our precinct, Marshall.

Q Okay. And prior to this date,  
had you interacted with him?

15                   A         I would see him around but I  
16       never really spoke to him, no.

17 Q Okay. And after this incident,  
18 did you see him or speak to him?

19 A Yeah. I would say hello, yeah.

Q Okay. Did at some point in time  
his employment with the NYPD cease?

22 A Yeah. I think he got us in  
23 trouble or something.

Q I'm sorry. I didn't hear that.

25 A Yeah. I think he got into some

1 W. A. Diab 85

lieutenant or any captains from either the 77  
or the 84?

4 A No.

Q Were you required to notify them  
that this situation was occurring?

7           A        Was I required to notify my  
8 captain? I don't have to tell my captain. I  
9 mean, I got the tip. It's -- you know, we  
10 went to check it out. We went to go check it  
11 out.

12 Q Okay. Now, after you had this  
13 conversation with Officer Cespedes, what did  
14 you do next?

15           A        I told the other guys, basically  
16        everyone, Feeley, Minucci, Rosiello,  
17       Anderson, and Mitchell, and we basically did  
18       a tactical plan on how we were going to  
19       approach and we headed out there.

Q What was the tactical plan?

21                   A         How we were going to set up and  
22                   what we were going to do. I was going to  
23                   basically be the lead car and they were going  
24                   to trail.

25 Q And you came up with this

1 W. A. Diab

94

2 Q Okay.

3 A Yeah.

4 Q Okay. I got you.

5 All right. So Mr. Benbow and

6 Mr. Bradley exit the location and make a

7 right on Bridge Street towards Nassau; is

8 that correct?

9 A Yes.

10 Q Okay. And at this point you're  
11 behind them, correct?

12 A Yes.

13 Q Okay. What happens next?

14 A So my vehicle trailed them. They  
15 make the right onto Nassau and then we make  
16 the right onto Nassau. At one point we're  
17 right alongside them. And then we pull up a  
18 little bit before them, a couple of feet, and  
19 I exit. I have my gun drawn and I tell them  
20 to get down on the floor. "Police. Get down  
21 on the ground."

22 Q Okay. Now, where were Officers  
23 Rosiello, Anderson, and Feeley at this point?

24 A They were behind me.

25 Q Okay. And what kind of car were

1 W. A. Diab

95

2 you in?

3 A I think I was in a Fusion,  
4 unmarked Fusion.

5 Q Okay. And Rosiello, Feeley, and  
6 Anderson, what kind of car were they in?

7 A I think they had a Crown  
8 Victoria.

9 Q Okay. Were they in a marked or  
10 unmarked car?

11 A Unmarked.

12 Q What color was your car?

13 A I think it was gray.

14 Q Okay. And what -- dark gray?  
15 Light dray?

16 A I think it was, like, a light  
17 gray.

18 Q Okay. And what color was their  
19 vehicle?

20 A I think it was black.

21 Q Okay. Where were you sitting in  
22 your vehicle?

23 A I was in the front passenger's  
24 seat.

25 Q Who was driving?

1 W. A. Diab 96

2 A Mitchell.

3 Q And who was in the passenger --  
4 who was in the back?

5 A Minucci.

6 Q Where in the back was he seated?

7 A I think he was, like, in the  
8 middle.

9 Q Okay. So just to back up a bit,  
10 you get to the location and you park, right?

11 A Yes.

12 Q And you're waiting. Then you see  
13 these guys come out and you start following  
14 them down the street onto -- where they make  
15 a -- they make a right and -- onto -- out of  
16 that location and make another right onto  
17 Nassau and you're right behind them, correct?

18 A Yes.

19 Q At this point are you  
20 communicating at all with anyone in the  
21 vehicle?

22 A All right. So can I back --  
23 backtrack a little bit?

24 Q It depends.

25 A Okay.

1 W. A. Diab 97

Q I just want to --

3           A       They exit but we didn't -- we  
4           didn't verify that -- Mitchell was on the  
5           phone with Marshall saying they're about to  
6           exit and he's basically saying there's a  
7           taller guy and a shorter guy with a bag. So  
8           that's when they exited and then -- so we  
9           knew it was them. So it wasn't like -- you  
10          know. I just wanted to throw that out there.

11                           Q               Okay. And I appreciate your  
12                           testimony.

13 So they go on Nassau -- they make  
14 a right onto Nassau and they're walking --

15 A Yes.

16 Q -- right?

17                            You pull up, you said, next to  
18 them.

22                   A         My plan? I -- I was just going  
23                   to get out and approach.

24 Q And do what?

25 A Stop --

1 W. A. Diab 98

Q      Arrest them?

3 A I was going to stop them.

4 Q Okay. And so you jump out of the  
5 car and your -- your gun is drawn, correct?

6 | A Yes .

7 Q What does Officer Minucci do?

8                   A           I don't know. My -- my focus was  
9                   on these two individuals.

10 Q Okay. And what -- what did  
11 Officer Mitchell do?

12 A He stopped the car.

13 Q Okay. And did you jump out of  
14 the car before or after the car came to a  
15 stop?

16                   A         It came to a stop and I jumped  
17                   out of the car.

18 Q Okay. Did you tell the officers  
19 in the car that you were about to do that?

22 Q Okay. And so you jump out of the  
23 car and you approached these two individuals,  
24 correct?

25 A Yes.

1 W. A. Diab 99

2 Q Okay. And you said you didn't  
3 see what Officer Minucci was doing, correct?

4 A That's correct.

5 Q Okay. And you didn't see what  
6 Officer Mitchell was doing; is that correct?

7 A That's correct.

8 Q Okay. Mr. Benbow at that point  
9 turns in a 180 and runs in the opposite  
10 direction, correct?

11 A Correct.

12 Q You're focused on Mr. Bradley  
13 who's on the ground, correct?

14 A Correct.

15 Q Okay. You don't see what happens  
16 after that; is that correct?

17 A That's correct.

18 Q Your attention is focused on  
19 Mr. Bradley on the ground, correct?

20 A Yes.

21 Q And then you hear gunshots; is  
22 that right?

23 A Yes.

24 Q At that point you didn't know who  
25 was shooting, right?

1 W. A. Diab 102

2 guy -- to the location where I heard the --  
3 the gunshots and --

4 Q Okay. Did you have your gun out  
5 at that point?

6 A I think I was holstered at that  
7 time.

8 Q Okay. And when you get to where  
9 you heard the gunshots, what do you see?

10 A I see Mr. -- Mr. Benbow on the  
11 ground. He's -- he's shot. And I see a  
12 gun -- a silver gun in the street a couple of  
13 feet away from him. And I see Rosiello and  
14 Feeley are right over in that direction. And  
15 then I --

16 Q Okay.

17 A -- I asked -- I could go on or  
18 no?

19 MR. WEINER: You can go.

20 Finish your answer.

21 A I asked what happened and they  
22 said, "We shot. He pulled out a gun. We --  
23 we -- we shot."

24 Q Okay. Did Mr. Benbow ever point  
25 a gun at you?